



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0606]

RIN 1625-AA00

Safety Zone; North Washington Street Bridge Replacement Project – Charles River, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters within 100 yards of the North Washington Street Bridge, Charles River, Boston, Massachusetts, from February 1, 2020 through December 31, 2023. The temporary safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created during the replacement project of the North Washington Street Bridge. When enforced, this rule would prohibit vessels and persons from being in the safety zone unless authorized by the Captain of the Port (COTP) Boston or a designated representative.

DATES: This rule is effective from February 1, 2020, through December 31, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Type USCG-2019-0606 in the “SEARCH” box and click "SEARCH." Click on Open Docket

Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or e-mail Mark Cutter, Waterways Management Division, U.S. Coast Guard Sector Boston; telephone 617-223-4000, e-mail mark.e.cutter@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
MBTA	Massachusetts Bay Transportation Authority
NPRM	Notice of proposed rulemaking
NAD 83	North American Datum 1983
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

Massachusetts Department of Transportation (MassDOT) notified Sector Boston that there would be times in which the navigable channels underneath the North Washington Street Bridge, Charles River, Boston, Massachusetts, will need to be closed for the removal of the old bridge spans, demolition of the swing span pier foundation, construction of the abutment, and replacement of the span. The exact times are currently unknown. However, every effort is being made by MassDOT and the contractor to schedule these closures during the winter months when the Charles River is iced over or during the fall and spring when boating traffic is minimal.

In response, on September 4, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone, North Washington Street Bridge Replacement Project – Charles River, Boston, MA (84 FR 46498 - 46501). There we

stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended on October 4, 2019, we received one comment in favor of this regulation out of safety concerns.

The replacement project started in the summer of 2018 and is expected to be completed in the spring of 2023. The COTP Boston determined that the potential hazards associated with the removal of the old bridge spans, demolition of the swing span pier foundation, construction of the abutment, and replacement of the span will be a safety concern for anyone within the work area. This temporary safety zone would be enforced during the removal of the old bridge spans, demolition of the swing span pier foundation, construction of the abutment, and replacement of the span or when other hazards to navigation arise. No vessel or person will be permitted to enter the temporary safety zone without obtaining permission from the COTP or a designated representative.

The Coast Guard will notify the public of closures through the Massachusetts Bay Harbor Safety Committee meetings, Boston's Port Operators Group meetings, Local Notice to Mariners, and the Massachusetts Boating & Yacht Clubs Associations network. The Coast Guard will issue a Safety Marine Information Broadcast (SMIB) via marine channel 16 (VHF-FM) seven days in advance of the commencement of the temporary safety zone.

The purpose of this rulemaking is to protect personnel, vessels, and the marine environment from potential hazards created during the replacement project of the North Washington Street Bridge, Charles River, Boston, Massachusetts. The Coast Guard is issuing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP Boston and has determined that potential hazards associated with the removal of the old bridge spans, demolition of the swing span pier foundation, construction of the abutment, and replacement of the span will be a safety concern for anyone within the work area or anyone transiting within 100 yards of the North Washington Street Bridge. The purpose of this rule is to ensure the safety of vessels and personnel within 100 yards of the North Washington Street Bridge before, during, and after removal of the old bridge spans, demolition of the swing span pier foundation, construction of the abutment, and replacement of the spans, or when other hazards to navigation arise.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment in favor of the temporary safety zone on the NPRM published September 4, 2019. The only regulatory text change in this rule is the start date is moved from December 1, 2019 to February 1, 2020. The contractor has stated that they are behind schedule and would not need the safety zone prior to February 1, 2020.

This rule establishes a safety zone from 12:01 a.m. on February 1, 2020, to 11:59 p.m. on December 31, 2023. While the safety zone would be effective throughout this period, it would only be enforced during periods when work barges and cranes will be placed in the navigable channel or when other hazards to navigation exist. Any closure is expected to last less than two weeks. The safety zone would include all navigable waters within 100 yards of the North Washington Street Bridge, Charles River, Boston, Massachusetts. During times of enforcement, no vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP Boston or a

designated representative. The Coast Guard will notify the public of closures through the Massachusetts Bay Harbor Safety Committee meetings, Boston's Port Operators Group meetings, Local Notice to Mariners, and the Massachusetts Boating & Yacht Clubs Associations network. The Coast Guard will issue a Safety Marine Information Broadcast (SMIB) via marine channel 16 (VHF-FM) seven days in advance of the commencement of the temporary safety zone.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time of year of the safety zone. There may be a time during the boating summer season that the safety zone needs to be enforced. However, MassDOT and the contractor are making all attempts to schedule these needed closures during the winter months. We expect the adverse economic impact of this temporary rule to be minimal.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local,

or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone for the navigable waters within 100 yards of the North Washington Street Bridge, Charles River, Boston, Massachusetts, from February 1, 2020 through December 31, 2023 for the replacement of the bridge for the replacement of the bridge. The safety zone will only be enforced during periods when work barges and cranes will be placed in the navigable channel or when other hazards to navigation arise. As discussed in our pre-construction meeting, any closure is expected to be of less than a two-week duration and all attempts are being made by MassDOT and the contractor to schedule these closures during winter months when there is no boating traffic or during the spring and fall season when boating traffic is minimal. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0606 to read as follows:

§165.T01-0606; Safety Zone; North Washington Street Bridge Replacement Project – Charles River, Boston, MA

(a) *Location.* The following area is a safety zone: all navigable waters within 100 yards of the North Washington Street Bridge, Charles River, Boston, Massachusetts.

(b) *Enforcement Periods.* This rule is enforceable from 12:01 a.m. on February 1, 2020, to 11:59 p.m. on December 31, 2023.

(c) *Definitions.* As used in this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, petty officer, or any federal, state, or local law enforcement officer who has been

designated by the Captain of the Port (COTP) Boston, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official patrol vessels* means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Boston to enforce this section.

(d) *Regulations.* When this safety zone is enforced, the following regulations, along with those contained in 33 CFR 165.23 apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the COTP Boston or the COTP's designated representatives. However, any person or vessel permitted to enter the safety zone must comply with the directions and orders of the COTP Boston or the COTP's designated representatives.

(2) To obtain permission required by this regulation, individuals may reach the COTP Boston or a COTP-designated representative via Channel 16 (VHF-FM) or 617-223-5757 (Sector Boston Command Center).

(3) *Penalties.* Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232.

Dated: January 14, 2020

Eric J. Doucette
Captain, U.S. Coast Guard
Captain of the Port Boston

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